

Order 2004-2-19
Served: February 19, 2004

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.



Issued by the Department of Transportation
on the 19th day of February, 2004

Essential air service at

ELY, NEVADA

under 49 U.S.C. 41731 *et seq.*

Docket OST-1995-361

ORDER RESELECTING CARRIER

Summary

By this order, the Department is reselecting Eagle Canyon Airlines, Inc., d/b/a Scenic Airlines, to provide essential air service (EAS) to Ely, Nevada, at an annual subsidy rate of \$698,078, for the two-year period March 1, 2004, through February 28, 2006.

Background

Order 2001-7-14, July 24, 2001, selected Eagle Canyon Airlines, Inc., d/b/a Scenic Airlines, to provide essential air service (EAS) to Ely, Nevada, for \$976,533 annually for the two-year period that ended on November 30, 2003. Subsequently, Order 2002-2-13 increased subsidy rates for all carriers, as part of a program-wide action recognizing the lower revenues and higher operating costs experienced by carriers as a result of the September 11, 2001, terrorist attacks.¹ That order increased the annual rate at Ely to \$1,005,395, as an interim rate. That rate covers the carrier's increased insurance costs, and we will make it final from October 1, 2001, through October 31, 2003.

By Order 2003-11-3, November 5, 2003, we requested proposals for replacement service for a new two-year period. In response, we received timely-filed competing proposals from Mesa Air Group on behalf of its subsidiary, Air Midwest, Arizona Express Airlines, Salmon Air, and Scenic Airways, as described below.

¹ See Order 2002-2-13 for a complete discussion of the program-wide relief the Department granted to carriers providing subsidized EAS.

Carrier Proposals

Each carrier's contract would extend for a two-year period, and is summarized below. Air Midwest proposes six round nonstop trips per week with 19-seat Beech 1900D aircraft at an annual subsidy of \$799,421, and states that it *expects* to offer the service under the America West code. Air Midwest indicates that it would be willing to initiate service to Las Vegas McCarran as soon as a security plan that is approved by the Transportation Security Administration is in place at Ely.² Salmon Air proposes twelve nonstop round trips each week to Salt Lake City with eight-passenger, twin-engine, piston aircraft. Salmon requests \$794,573 annual subsidy for its service. Arizona Express proposes one round trip every day to Las Vegas and requests \$568,002 annual subsidy. Scenic Airlines, the incumbent, proposes to continue its existing service of six nonstop round trips per week to North Las Vegas airport with 19-seat Twin Otter aircraft and requests \$698,078 annual subsidy.

Community Comments

We received comments from various civic groups including the Ramada Inn and Copper Queen Casino, El Aero Service, the White Pine County Economic Diversification Council, the White Pine County Chamber of Commerce, the Ely Renaissance Society, Clark publications, as well as the Mayor of Ely and the White Pine County Commission. All strongly endorsed the reselection of Scenic at Ely. The Mayor notes that Scenic's current service "is the best that can be recalled over the last decade."

Decision

After careful consideration of the carriers' proposals and the community's views, we have decided to reselect Scenic at its proposed subsidy rate. Scenic has developed the market—traffic is up significantly, and subsidy is down substantially from the prior rate, a significant accomplishment, especially in the aftermath of the terrorist attacks. As the Mayor indicates, Ely has had reliable service for the first time in several years, given the demise of previous service providers. Given the community support for Scenic and the fact that the proposals of Salmon Air and Air Midwest require higher subsidy levels, the decision is between Scenic and Arizona Express. Arizona Express is the only carrier to request less subsidy than Scenic, and the difference in subsidy, though significant (\$698,078 vs. \$568,002), is not dispositive, in view of the checkered history of service at this community, and the disruption that would be caused by yet another carrier transition. In addition, we have concerns with Arizona Express's proposal. Under our new streamlined carrier-selection procedures, a premium is placed on carriers submitting best and final offers. There are sets of information they may choose to submit in order to be fully descriptive, and other sets that are required. As discussed on page 3 of Order 2003-11-3,

"The applicants can make their own judgments as to the level of detail they wish to present; however, they might want to include proposed schedules as well as supporting data for their subsidy requests, such as projected block hours, revenues and expenses.

² Ely does not have an approved TSA security plan, and implementation of one is not imminent. Scenic has taken Ely passengers to a non-sterile area at North Las Vegas, and bused connecting passengers to McCarran.

Carriers' proposals must (emphasis added) specify weekly service frequency, completion factor, intermediate stops (if any), aircraft type, and level of annual subsidy. We strongly encourage clear, well-documented proposals that will facilitate their evaluation by the affected community and the Department."

Arizona Express does not indicate what aircraft type it proposes. While we believe that the carrier would operate the only aircraft currently in its fleet, a Beech 1900, its proposal does not so indicate. We caution Arizona Express and all carriers that under our new carrier-selection procedures, it is critical that their proposals accurately reflect all required aspects of their service proposals for evaluation by the communities and the Department.

Carrier Fitness

49 U.S.C. 41737(b) and 41738 require that we find an air carrier fit, willing and able to provide reliable service before we compensate it for providing essential air service. We last found Scenic Airlines fit by Order 2001-10-9, October 18, 2001, where we tentatively selected it to provide subsidized essential air service at Merced, California. Since then, the Department has routinely monitored the carrier's continuing fitness, and no information has come to our attention that would lead us to question its ability to operate in a reliable manner. Based on our review of its most recent submissions, we find that Scenic continues to have available adequate financial and managerial resources to provide quality service at the community at issue here, and that it continues to possess a favorable compliance disposition. The Federal Aviation Administration has advised us that the carrier is conducting its operations in accordance with 14 CFR Part 121, and knows of no reason why we should not find that Scenic remains fit.

This order is issued under authority delegated in 49 CFR 1.56a(f).

ACCORDINGLY,

1. We select Eagle Canyon Airlines, Inc., d/b/a Scenic Airlines, to provide essential air service at Ely, Nevada, as described in Appendix B;
2. We set the final rate of compensation for Scenic Airlines, for the provision of essential air service at Ely, Nevada, as described in Appendix B, to be payable as follows: for each month during which essential air service is provided, the amount of compensation shall be subject to the weekly ceiling, and shall be determined by multiplying the subsidy-eligible arrivals and departures completed during the month by \$1,140.65;³
3. We direct Scenic Airlines, to retain all books, records, and other source and summary documentation to support claims for payment, and to preserve and maintain such documentation in a manner that readily permits its audit and examination by representatives of the Department. Such documentation shall be retained for seven years or until the Department indicates that the records may be destroyed, whichever comes first. Copies of flight logs for aircraft sold or

³ See Appendix B for calculations.

disposed of must be retained. The carrier may forfeit its compensation for any claim that is not supported under the terms of this order;

4. We find that Scenic Airlines, continues to be fit, willing and able to operate as a commuter air carrier and capable of providing reliable essential air service at Ely, Nevada, and;

5. This docket will remain open until further order of the Department; and

6. We will serve copies of this order on the mayor and airport manager of Ely, Nevada, and Mesa Air Group, Arizona Express, Salmon Air, and Scenic Airlines.

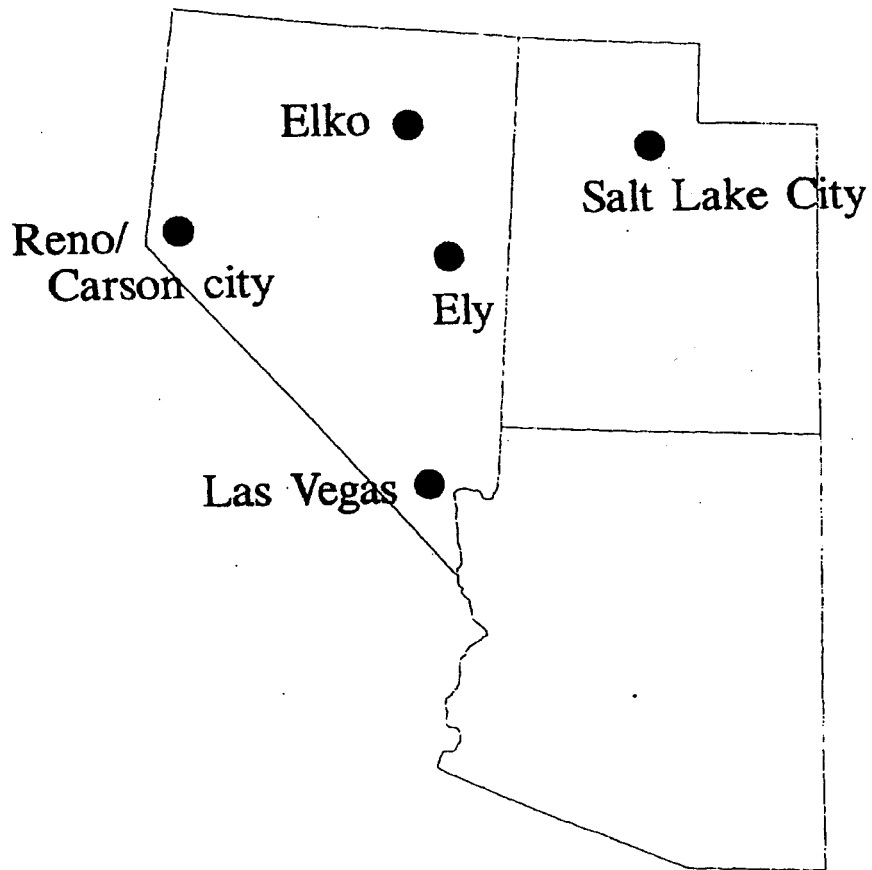
By:

KARAN K. BHATIA
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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on the World Wide Web at <http://dms.dot.gov>*

MAP



Ely to-- Reno-264
-- Salt Lake City -184
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**Scenic Airlines, Inc., Essential Air Service to be Provided to
Ely, Nevada, Docket OST-1995-361**

Effective Period: March 1, 2004, through February 28, 2006.

Scheduled Service:

6 nonstop round trips per week to North Las Vegas.

Aircraft: Brasilia, DHC-6 Twin Otters

Rate per Salt Lake City Flight: \$1,140.65 ¹

Weekly Ceiling at each Community: \$13,687.80 ²

Note: The carrier understands that it may forfeit its compensation for any flights that it does not operate in conformance with the terms and stipulations of the rate order, including the service plan outlined in the order and any other significant elements of the required service, without prior approval. The carrier understands that an aircraft take-off and landing at its scheduled destination constitutes a completed flight; absent an explanation supporting subsidy eligibility for a flight that has not been completed, such as certain weather cancellations, only completed flights are considered eligible for subsidy. In addition, if the carrier does not schedule or operate its flights in full conformance with this order for a significant period, it may jeopardize its entire subsidy claim for the period in question. If the carrier contemplates any such changes beyond the scope of the order during the applicable period of these rates, it must first notify the Office of Aviation Analysis in writing and receive written approval from the Department to be assured of full compensation. Should circumstances warrant, the Department may locate and select a replacement carrier to provide service on these routes. The carrier must complete all flights that can be safely operated; flights that overfly points for lack of traffic will not be compensated. In determining whether subsidy payment for a deviating flight should be adjusted or disallowed, the Department will consider the extent to which the goals of the program are met and the extent of access to the national air transportation system provided to the community.

If the Department unilaterally, either partially or completely, terminates or reduces payments for service or changes service requirements at a specific location provided for under this order, then, at the end of the period for which the Department does make payments in the agreed amounts or at the agreed service levels, the carrier may cease to provide service to that specific location without regard to any requirement for notice of such cessation. Those adjustments in the levels of subsidy and/or service that are mutually agreed to in writing by the parties to the agreement do not constitute a total or partial reduction or cessation of payment.

Subsidy contracts are subject to, and incorporate by reference, relevant statutes and Department regulations, as they may be amended from time to time. However, any such statutes, regulations, or amendments thereto shall not operate to controvert the foregoing paragraph.

¹ Annual compensation of \$698,078 divided by the estimated annual completed departures and arrivals at a 98 percent completion factor: 12 departures/arrivals x 52 weeks x .98 = 612 total.

² 12 flights/week x \$13,687.80.